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OLC # 78-3670

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78-7460

4 NOV 1978

MEMORANDUM FOR: Deputy Director of Central Intelligence

VIA: Deputy Director for Operations
Chief, International Activities Division

25X1 FROM: [redacted]
Chief, IAD/Covert Action Staff

SUBJECT: Congressional Inhibitions on Covert Action

1. General. Virtually all Congressional inhibitions on the conduct of Covert Action find their origin in the Hughes-Ryan Amendment, which requires that the President "find" that every operation the Agency conducts overseas "not solely for the collection of intelligence" is "important to the national security," and that "appropriate committees of Congress" receive "timely" notification of such "findings."

2. Leaks. The phrase "appropriate committees of Congress" include the two intelligence oversight committees, foreign affairs committees, appropriations committees and armed services committees, for a total of eight. All of these committees and their staffs must be notified of covert action findings (in most cases, staff access is restricted to a bigot list). This notification frequently leads to a committee request for a briefing--always in the case of the two oversight committees. As a result, within Congress there is a broad knowledge of the general nature of our covert action programs, as well as awareness of the specifics among those committee members and staffers who receive briefings.

3. This broad knowledge of CIA covert activities requires that before the Executive Branch approves a covert action program it must consider the likelihood and consequences of a Congressional leak. This is inhibiting in three ways: First, we become reluctant to propose controversial activities. For example, it would be dubious for us to propose a covert [redacted] Congressman could sabotage such a program with a well-contrived leak. Second, we become reluctant to propose activities which,

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while not controversial, could seriously backfire if they did leak. There was, for example, serious concern over whether

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are indirectly inhibited from engaging in certain activities with liaison, not because we are reluctant to do so, but because foreign intelligence services are reluctant to engage in activities which, if exposed, will subject them

25X1 to embarrassment. [redacted] specifically expressed reservations on cooperating with us for this reason.

4. Moreover, in proposing covert action operations, we must keep Congressional hobby horses in mind. For example, a number of Congressmen are known to have reservations about using covert action to affect the outcome of diplomatic negotiations in which the U.S. is involved. We have not yet tested Congressional waters regarding any exotic black or deceptive activity, but can anticipate some hostile reactions.

5. The Review and Approval Process. Our problem lies not only with the Hughes-Ryan Amendment itself, but with the current Justice Department's strict interpretation of it. Justice has declared that under Hughes-Ryan each and every covert action operation requires a finding. In fact, shortly after the new Administration took office, Justice appeared ready to insist that every media placement and every recruitment of a covert action asset receive Presidential sanction. Common sense eventually dictated a relaxation of these standards so as to require merely that each "Perspectives" should have a so-called "generic" finding, rather than compelling the President to approve every media placement. Similarly, Justice has conceded that the President may annually review and approve our infrastructure of covert action assets, rather than pass on each recruitment of a new covert action agent.

6. Nevertheless, serious anomalies remain. For example, at the SCC's request, Covert Action Staff prepared a draft "generic" finding authorizing routine covert actions in support of democratic trends and movements abroad. The Office of General Counsel has just advised us that this proposal is certain to be rejected by the Justice Department because it represents a request to pursue various political ends in different countries. This, in OGC's view, violates Justice's interpretation of the Hughes-Ryan requirement that every separate covert action operation be approved. This in turn

implies that every time we wish to [redacted] 25X1
encouraging something rather innocent such as free elections
25X1 [redacted] we will need a separate Presidential Finding.

7. Moreover, as the process to acquire Presidential findings makes demands on the time of cabinet-level officials and the President, as well as the bureaucracy, we become reluctant to propose covert action programs unless a significant degree of success is virtually assured. For example,
25X1 [redacted] recently reported that a reliable, well-placed source might be able to play a useful agent of influence role
25X1 in the current crisis [redacted] and it seemed worth attempting to use him in this manner: essentially we had nothing to lose. Nevertheless, the uncertainties surrounding this asset's influence capabilities made us unwilling to request a meeting of the SCC to consider his use. The "democracy" generic finding was in part intended to overcome this sort of problem, but, per the above, we appear to be fighting a losing battle on this proposal. Even if we secure findings for fairly low cost activities on other matters, such as [redacted] 25X1
HPSCI staffer recently asked us how the President could determine that an operation of this scope, no doubt worthwhile in itself, was "important" to the national security.

8. Furthermore, the Hughes-Ryan Amendment, and Justice's interpretation, mean that a Chief of Station, even when directly tasked by his Ambassador, cannot undertake ad hoc covert actions of a routine nature--for example: [redacted] 25X1
25X1 [redacted] 25X1
25X1 Ambassador [redacted] endorsed the concept of using one agent of influence in an activity designed to [redacted] 25X1
return to democracy. This would have been a single, virtually no-cost, no-risk operation. However, it was determined that such an operation required a Presidential Finding. (By the time the Finding was drafted, the situation [redacted] had 25X1
changed and the operation was scrubbed.)

9. Money. We expect the budgetary process to be inhibiting, but Congress--specifically, the SSCI--has, in our view, occasionally abused its prerogatives in this regard. The most flagrant instance is their unilateral termination of a $2,000 agent of influence operation in
25X1 [redacted] In fairness, we may have presented to them in somewhat ambiguous language. The SSCI's overall cut

25X1 [redacted] our FY 79 Covert Action budget appears to have been based in large part on the position that we should not have so many covert action assets [redacted] because this was tantamount to propagandizing our friends. There are, on the other hand, very valid reasons for maintaining a solid covert action potential [redacted] 25X1 25X1 problem; highlighting Soviet human rights abuses; providing [redacted] 25X1 25X1 [redacted] We have in recent months attempted to educate the SSCI to these requirements, and have advised them that the President has reviewed and approved the entire covert action infrastructure, [redacted] 25X1

10. Time Constraints. Acquiring a Presidential Finding takes a certain amount of bureaucratic coordination and could consume even more time if the President was unavailable. This could prevent CIA from taking vital, urgent action.

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25X1 [redacted] If for instance, a foreign military officer offered the Agency an opportunity to intervene in a modest, low key fashion in his country to forestall a coup that would represent a grave setback for democracy, more than likely the situation would be resolved without CIA assistance, since it highly improbable CIA could act in time.

11. Current Trends. Recent correspondence suggests that the oversight committees have no intention of relaxing their scrutiny of covert action. The 28 July 1978 letter of Congressmen Boland, Aspin and Wilson to the President recommended that any program of assistance to liaison to counter foreign domestic terrorism be made the subject of a Presidential Finding. A finding would, of course, require notification of the Hughes-Ryan committees. Senators Bayh and Goldwater's letter of 18 August similarly saw merit in escalating the approval level for certain routine covert actions. Senator Bayh on 18 August also sent a letter to the DDO requesting information on 19 relatively minor aspects of his 8 July testimony on the New Consolidated Finding. Thus while Congress at this time appears to have a more favorable view of covert action in a general sense, they seem to want to increase their role in the covert action review and approval process.

12. Conclusion. We view the restraints imposed by Hughes-Ryan as a significant impairment of the President's responsibilities under the Constitution in the field of foreign affairs, which he otherwise does not share with the Congress. For example, the President obviously by overt means has the authority and indeed the responsibility to influence outcomes abroad which would be favorable to the interests of the United States. If he accomplishes this same thing "covertly" the legitimacy of his action should not be subject to question.

13. Remedies. The restraints which exist because of the Hughes-Ryan procedures, or from other causes, arose from a widespread perception that the Executive was becoming increasingly less accountable to Congress and the American public for its action. But a balance has to be struck between accountability, which requires a certain openness, and permitting the Chief Executive to take those actions, if necessary in secret, that he believes are vital to the security interests of the U.S. This would seem to require the following, as far as covert action is concerned:

a. Reduction of the number of Hughes-Ryan committees, preferable to the House and Senate oversight committees.

b. The elimination of micro-management of the covert action program, to be replaced by:

(1) a periodic review of specific programs

(2) budget review in which the Congress would restrain itself from arbitrary action and consult openly with CIA on any apparent problems

c. Identification of categories of low level, low cost covert action which could be removed from the provisions of Hughes-Ryan presumably to be cleared only with the Department of State, but subject to periodic review by the SCC and inclusion in the periodic Congressional review suggested above.

14. These innovations would return to the President the authority in foreign affairs which is rightfully his, while providing Congress ample opportunity for oversight. The oversight should consist of final notification to the oversight committees only of CIA's programs and timely submission of progress reports for Congressional review. In the interim, the President should be free to use the CIA, when he deems necessary, to respond flexibly and swiftly to emerging situations.

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CONCUR:

25X1 [redacted]

Deputy Director for Operations

28 DEC 1978
Date

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

25X1 FROM: [redacted]
C/IAD/CAS 3D00

EXTENSION [redacted] NO.

DATE 22 November 1978 25X1

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. C/IAD				25X1
2.				
3. DDO				
4.				
5. DDCI				
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The attached memorandum responds to a request from the DDCI for backup material on Congressional inhibitions on Covert Action. It has not been staffed out with OGC or OLC, and you may wish to coordinate with those offices.

This memorandum supports the "hard line" position the DDCI believes we should take with Congress, and which you also have endorsed. However, the DCI's marginalia on the hard option vs. soft option package of letters we recently presented to him indicate that he prefers a moderate approach. Under these circumstances, the DDCI may wish to shelve any initiatives he had in mind.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

25X1 FROM: [redacted]
C/IAD/CAS
3D00

EXTENSION [redacted] NO.

DATE 22 November 25X1

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. C/IAD			✓	BY HAND - [redacted] 25X1
2.				4 January 1979
3. DDO Registry	24 NOV 1978		✓	OLC Comment:
4.				OLC comments are limited to para 2, which is a little misleading. In fact, House Armed Services has voluntarily withdrawn themselves from the notification procedure; briefings of Senate and House Appropriations have been limited to two or less staffers respectively and Members have not been briefed. Foregoing notwithstanding, the potential for a vast number of Members and staffers to become knowledgeable is clearly present. [redacted] 25X1
5. ADDO	24 NOV 1978			
6. DDO	24 NOV 1978	28 DE		
7.				
8. E/R	28 DEC 1978			
9. Leg Counsel				
10. Gen Counsel				To 9+10: See 3A/DDCI, pls comment on enclosed & DDCI. [redacted] 28 Dec.
11.				
12. DDCI	12/28/78			
13.				
14.				
15.				